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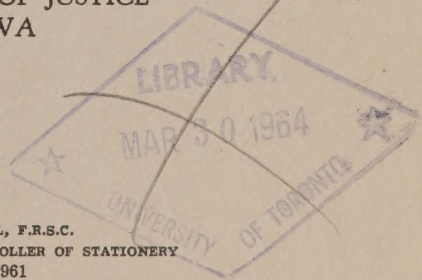
RESTRICTIVE TRADE PRACTICES COMMISSION

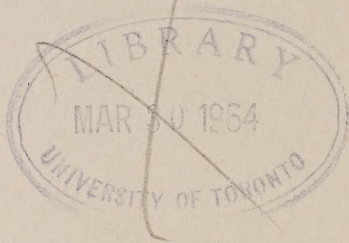
REPORT

Concerning alleged Attempts at Resale Price
Maintenance in the Distribution and Sale
of Cameras and Related Products
(Garlick Films Limited).

DEPARTMENT OF JUSTICE
OTTAWA

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961





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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING ALLEGED ATTEMPTS AT RESALE PRICE
MAINTENANCE IN THE DISTRIBUTION AND
SALE OF CAMERAS AND RELATED
PRODUCTS (GARLICK FILMS LTD.)

COMBINES INVESTIGATION ACT

Ottawa

1961


ROGER DUHAMEL, F.R.S.C.
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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q. C., M. A., LL. B., B. C. L.
Chairman

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RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

October 13, 1961

Honourable E. Davie Fulton, P. C., Q. C., M. P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with alleged attempts at resale price maintenance in the distribution and sale of cameras and related products by Garlick Films Ltd.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of sections 18 and 19 of the Act.

Argument on the Statement of Evidence was heard by the Commission at Toronto on March 23, 1961. Messrs. L. P. Landry, S. F. Sommerfeld and M. E. Butler appeared on behalf of the Director of Investigation and Research, and Messrs. R. M. Sedgewick, J. A. Langford and B. H. Stewart on behalf of Garlick Films Ltd.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry, which was conducted by the Director of Investigation and Research*, was brought before the Restrictive Trade Practices Commission** by the submission of a Statement of Evidence pursuant to section 18 of the Combines Investigation Act. A copy of such statement, dated February 3, 1961, was sent by the Director to Garlick Films Ltd.*** against whom allegations were made therein.

2. Conduct of the Investigation by the Director

The origin of the inquiry by the Director is described as follows in the Statement of Evidence:

"2. This inquiry was commenced as the result of complaints alleging that certain distributors of photographic equipment and supplies and, in particular, still-and motion-picture cameras and projectors, were practising resale price maintenance in connection with the distribution of their products, contrary to section 34 of the Combines Investigation Act."

In the course of the investigation conducted by the Director, the books, papers, records and other documents of Garlick Films Ltd., 88 Tycos Drive, Toronto, Ontario, were examined and certain documents copied pursuant to section 10 of the Act. All documents selected for copying were marked with code letters indicating the premises on which the documents were found, and with code numbers. They were also marked with serial numbers.

* Hereinafter called the Director.

** Hereinafter called the Commission.

*** Hereinafter sometimes referred to as "Garlick" or "the Company".

During the course of the inquiry the Director also applied for permission to examine witnesses under oath as provided in section 17 of the Act. Orders to this effect were issued and sworn evidence was taken on January 15, 1960, in Vancouver before Mr. A. S. Whiteley, a member of the Commission, from the following witnesses:

Archie Baker	-	of Baker Drugs Ltd.
Samuel Solomon Bass	-	of London Drugs Limited.

At hearings held in Toronto, Ontario, on February 16 and 17, 1960, before Mr. C. Rhodes Smith, Q. C., Chairman of the Commission, the following gave evidence:

Roland deLacy Garlick	-	President of Garlick Films Ltd.
John Douglas Lawrence Nicholls	-	Sales Manager of Garlick Films Ltd.
Helmut Schwarzer	-	doing business under the name of Camera Enterprises Reg.

Whenever reference is made in this report to the transcript of the evidence taken during these examinations, it will be made as follows: (Evidence, p. . . .). During the course of these examinations, certain exhibits were filed.

3. Allegations Made in the Statement of Evidence

The concluding section of the Director's Statement of Evidence contains the following summary and allegations:

"A. Summary

76. The evidence in this Statement indicates that during the period covered by this inquiry Garlick sought, as a matter of policy, to control the retail selling prices of products furnished by it. Inter-office memoranda and correspondence between Garlick's agents and employees indicate that Garlick objected to retail advertising at prices below those suggested by Garlick, and in some cases to selling at prices below those suggested by Garlick, particularly with regard to the Bolex line of cameras and projectors. The evidence indicates that retail dealers were instructed by Garlick not to advertise Garlick's products at prices below those suggested by Garlick,

and that it was Garlick's policy not to supply retailers who advertised, or in some cases who sold or intended to sell its products at prices below suggested resale prices.

77. The evidence also indicates that the Company makes, with regard to its Bolex equipment, a distinction between franchised dealers, stocking dealers and non-stocking dealers. Discounts of 33 1/3 and 5 per cent, 33 1/3 per cent and 25 per cent from list prices are extended to franchised, stocking and non-stocking dealers, respectively.

78. It appears from the evidence that certain dealers objecting to price-cutting practices on the part of some of their competitors, expressed, verbally or in writing, their concern with respect to such practices and in some instances, requested that some action be taken by Garlick in order to put an end to such practices.

79. The evidence also indicates that Garlick Films Ltd. attempted to have London Drugs advertise and sell its Bolex products at Garlick's suggested list price and that following the refusal of London Drugs to do so, it refused supplies of Bolex products to London Drugs.

80. On March 19, 1958 an order including certain Bolex products was received by Garlick Films Ltd. from London Drugs. On the same occasion, London Drugs' application for a Bolex franchise was received by Garlick. Attempts were made at that time, particularly by James Andrews, the Company's Vancouver representative, to induce London Drugs to sell Bolex products at the Company's suggested list price should the Company supply it with Bolex. Attempts were also made by Mr. Nicholls, the Company's Sales Manager, on April 8, 1958 during the course of a telephone conversation with Mr. Bass, Proprietor of London Drugs, to induce London Drugs to sell Bolex products at the Company's suggested list price. On April 11, 1958 Mr. Nicholls, in a letter to London Drugs and following London Drugs' refusal to agree to the Company's policy regarding resale prices, informed London Drugs that the Company would not supply with Bolex products. From time to time thereafter London Drugs attempted to secure supplies of Bolex products from Garlick, but was never successful in its endeavour.

81. The evidence also indicates that Baker Drugs, because of its price-cutting policy was refused supplies of Bolex products by Garlick Films Ltd. During October 1958, Baker Drugs, ordered six Bolex cameras from Garlick Films Ltd. These cameras were not supplied to Baker Drugs because of its policy of selling photographic equipment and supplies at less than distributor's suggested list price.

82. The evidence also indicates that Garlick Films Ltd. through Mr. Nicholls, its Sales Manager, induced Helmut Schwarzer, Proprietor of Camera Enterprises Reg., not to advertise Bolex products at prices below Garlick's suggested list prices.

83. In August or September 1958, Helmut Schwarzer made a visit to Mr. Nicholls of Garlick Films Ltd. in an attempt to secure supplies of Bolex products. During the course of that visit, he was asked by Mr. Nicholls not to advertise these products at prices below the Company's suggested prices if he should be supplied with Bolex products by Garlick. However, the evidence indicates that Mr. Schwarzer was not taken on as a dealer after the above noted visit with Mr. Nicholls. Helmut Schwarzer, in a further attempt to secure supplies of Bolex products from Garlick, met Mr. Nicholls in St. Catharines, Ontario, at which time he was asked by Mr. Nicholls that should the Company supply him with Bolex products he would not advertise these products at prices below the Company's suggested prices. Following this second meeting with Mr. Nicholls, Helmut Schwarzer was supplied thereafter with Bolex products.

B. Allegations

84. It is alleged that from time to time during the period March 1, 1958 to May 31, 1959 Garlick Films Ltd., being a dealer within the meaning of section 34 of the Combines Investigation Act, directly or indirectly, by agreement, threat, promise or other means, did require or induce or attempt to require or induce London Drugs Limited to resell certain products, in particular motion-picture cameras and projectors, at prices specified or at prices not less than certain minimum prices specified by the said Garlick Films Ltd. Particulars of such allegation are set out in paragraphs 79 and 80 hereof.

85. It is alleged that from time to time during the period March 1, 1958 to May 31, 1959 Garlick Films Ltd., being a dealer within the meaning of section 34 of the Combines Investigation Act, directly or indirectly, by agreement, threat, promise or other means, did require or induce or attempt to require or induce Helmut Schwarzer to resell certain products, in particular motion-picture cameras and projectors, at prices specified or at prices not less than certain minimum prices specified by the said Garlick Films Ltd. Particulars of such allegation are set out in paragraphs 82 and 83 hereof.

86. It is also alleged that from time to time during the period of March 1, 1958 to May 31, 1959 Garlick Films Ltd., being a dealer within the meaning of section 34 of the Combines Investigation Act, did, from time to time, refuse to supply certain of the products distributed by it, in particular, motion-picture cameras and projectors to London Drugs and Baker Drugs Ltd., for the reason that such retailers had refused to resell or offer for resale such products at prices specified or at prices not less than minimum prices specified by Garlick. Particulars of such allegation are set out in paragraphs 80 and 81 hereof."

4. Hearing Before the Commission

On receipt of the Statement of Evidence, the Commission, in accordance with the provisions of section 18 of the Act, by an Order dated February 22, 1961, fixed Thursday, March 23, 1961, at the hour of 10 o'clock in the forenoon, in the Board Room, Department of Labour, MacKenzie Building, 36 Adelaide Street East, in the City of Toronto, in the Province of Ontario, as the date, time and place at which argument could be submitted by or on behalf of the Director in support of the Statement of Evidence and at which Garlick Films Ltd. would be allowed full opportunity to be heard with respect to the allegations made therein against the Company.

At the hearing which was held on March 23 and 24, 1961, the following appearances were entered:

Mr. L. P. Landry,)	for the Director of Investigation
Mr. S. F. Sommerfeld,)	and Research
and Mr. M. E. Butler)	

Mr. R. M. Sedgewick,)	for Garlick Films Ltd.
Mr. J. A. Langford,)	
and Mr. B. H. Stewart)	

Before argument was heard by the Commission, two witnesses, Messrs. John Shapiro, a camera dealer in Toronto, and Roland deLacy Garlick, President of Garlick Films Ltd., gave evidence. Exhibits H-1 to H-12-A were also filed. Whenever reference is made in this report to the transcript of the proceedings before the Commission, it will be done as follows: (Hearings, p. . . .).

5. Position Taken by Garlick Films Ltd.
 with Respect to the Allegations

In giving notice of the hearing the Commission, in accordance with its usual practice, had requested Garlick Films Ltd. to submit a statement indicating the position taken with respect to the facts and conclusions set out in the Statement of Evidence.

The Company through its counsel submitted a brief, reading as follows;

- "1. The oral and documentary evidence taken in this inquiry will be considered and commented upon in a detailed manner and issue will be taken with factual inferences therefrom made by the Director in support of the allegations of illegal activity contained in Chapter 6 of this Statement.
2. Issue will be taken with each of the allegations of misconduct set out in paragraphs 84, 85 and 86 of the Statement of Evidence.
3. With respect to paragraphs 84 and 85 of the Statement of Evidence it will be submitted that at no time did Garlick Films Limited directly or indirectly, by agreement, threat, promise or other means, require or induce or attempt to require or induce any person to resell any products at prices specified or at prices not less than certain minimum prices specified by Garlick Films Limited.
4. With respect to paragraph 86 it will be submitted that at no time did Garlick Films Limited refuse to supply any of the products distributed by it to any person for the reason that such person had refused to resell or offer for resale such products

at prices specified or at prices not less than minimum prices specified by Garlick Films Limited.

5. It is proposed before the Commission to recall R. de L. Garlick, President of Garlick Films Limited who was originally examined in this inquiry at hearings held on February 16th, 1960 and to call as a witness John Shapiro, proprietor of Pan Camera Shop 1474 $\frac{1}{2}$ Yonge Street and 767 Warden Avenue, both in the City of Toronto. "

6. Amendment to Section 34 of the Act

Resale price maintenance is prohibited by section 34 of the Combines Investigation Act which read as follows prior to the summer of 1960:

"34. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

- (a) at a price specified by the dealer or established by agreement,
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup or discount specified by the dealer or established by agreement,
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (e) at a discount not greater than a maximum discount specified by the dealer or established by agreement,

whether such markup or discount or minimum markup or maximum discount is expressed as a percentage or otherwise.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

- (a) has refused to resell or to offer for resale the article or commodity
 - (i) at a price specified by the dealer or established by agreement,
 - (ii) at a price not less than a minimum price specified by the dealer or established by agreement,
 - (iii) at a markup or discount specified by the dealer or established by agreement,
 - (iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
 - (v) at a discount not greater than a maximum discount specified by the dealer or established by agreement; or
- (b) has resold or offered to resell the article or commodity
 - (i) at a price less than a price or minimum price specified by the dealer or established by agreement,
 - (ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or
 - (iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.

(4) Every person who violates subsection (2) or (3) is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both. 1951 (2nd Sess.), c. 30, s. 1; 1952, c. 39, s. 4. "

As the result of the enactment of section 14 of the Act 8-9 Elizabeth II, Chapter 45, in the summer of 1960, section 34 of the Combines Investigation Act has been amended by adding thereto the following subsection :

"(5) Where, in a prosecution under this section, it is proved that the person charged refused or counselled the refusal to sell or supply an article to any other person, no inference unfavourable to the person charged shall be drawn from such evidence if he satisfied the court that he and any one upon whose report he depended had reasonable cause to believe and did believe

- (a) that the other person was making a practice of using articles supplied by the person charged as loss-leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising;
- (b) that the other person was making a practice of using articles supplied by the person charged not for the purpose of selling such articles at a profit but for the purpose of attracting customers to his store in the hope of selling them other articles;
- (c) that the other person was making a practice of engaging in misleading advertising in respect of articles supplied by the person charged; or
- (d) that the other person made a practice of not providing the level of servicing that purchasers of such articles might reasonably expect from such other person. "

CHAPTER II

DISTRIBUTION OF PHOTOGRAPHIC EQUIPMENT BY GARLICK

1. Nature of the Business

The Statement of Evidence contains the following description of Garlick, the lines of photographic equipment dealt in and the method of distribution:

"7. Garlick Films Ltd. (sometimes hereinafter referred to as Garlick) was incorporated under the Laws of Canada by Letters Patent dated July 27, 1936 under the name of John Powis Company, Limited. By Supplementary Letters Patent dated August 18, 1941 the name of the Company was changed to Garlick Films Ltd. The head office of the Company is located in Toronto.

8. Garlick is engaged in the distribution of imported photographic equipment. It distributes throughout Canada the following lines of cameras, projectors and accessories: [Evidence, pp. 72-73. See Also Exhibit 4, Serials 721 to 916 inclusive]:

Bolex, manufactured in Ste-Croix, Switzerland
Regula, manufactured in Bad Leuzen, West Germany
Pentax, manufactured in Tokyo, Japan
Gossen, manufactured in Erlangen, West Germany
Sinar, manufactured near Zurich, Switzerland
Gralab, manufactured in Cincinnati, U. S. A.

The Company is the exclusive Canadian distributor for the above lines of photographic equipment [Evidence, p. 74].

9. Garlick distributes the above products direct to retailers through its own salesmen. Until July 1959, the whole of Canada was divided into five areas with one salesman assigned to each of them as follows [Exhibit 4, Serial 858]:

British Columbia and Alberta, James Andrews
Western Ontario, William Brown
Toronto West and surrounding areas, Jerry Lemm
Toronto East and Eastern Ontario, Victor Day
Quebec, Maritimes and Newfoundland, William Phelan

10. R. de L. Garlick, President of Garlick, stated in his evidence that James Andrews had left the Company after July 1959, and was replaced by Victor Day, while Peter Byrnes was assigned to Mr. Day's territory. A new territory was created after July 1959, from Sault Ste. Marie to east of Edmonton to which Mr. Jerry Lenders was assigned [Evidence, pp. 84-85]. Written reports are made from time to time by the salesmen to the Company.

11. A catalogue and price list showing suggested list prices for the Company's different products is published by Garlick and distributed to retailers [Exhibit 4, Serials 721 to 916 inclusive]. Prices at which products are sold to retailers are derived from the suggested list prices published in the Company's catalogue. Discounts off the suggested list prices are indicated by code letters the meaning of which is explained on a sheet inserted in the catalogue, showing discount applicable to each code letter [Exhibit 4, Serial 912]. The H discount, 33 1/3 per cent was indicated by Mr. Garlick as being the usual or normal discount given by the Company [Evidence, pp. 80-81]. . . ."

The list prices used by Garlick are described in the conditions of sale issued by the Company as "suggested retail prices" (Serial 857).

2. Garlick's Service Department

Garlick maintains a service department to do the repair work on the products it distributes. While retail dealers may make adjustments to photographic equipment, Garlick desires that all repair work be done in its service department. On this matter, Mr. Garlick gave the following evidence:

BY MR. SOMMERFELD:

"Q. Do you carry out any repair work?

A. Yes, all of it.

Q. And you have facilities yourselves for doing that?

A. We have facilities and we have a thoroughly trained staff. If I might exemplify, our men are all highly trained technicians. Initially they go through in **Europe a complete training which will** probably take **them** about eight years and we send them back for refresher courses from time to time. At the present time I have a man who has been taking a refresher course. Our organization has to be able to give complete technical assistance to anyone who needs it."

(Evidence, p. 71)

"Q. The products which you sell, do they carry some sort of guarantee?

A. Yes.

Q. What is the nature of the guarantee in the case of Bolex, for example?

A. In the case of Bolex it is 12 months' guarantee against defective materials and workmanship. That is the guarantee but we in practice exceed that guarantee by far, that is, the guarantee that one gives.

Q. In the event of there being some such defect which I suppose does happen, occasionally --

A. Yes, definitely, certainly.

Q. - - I presume in the first instance the customer would go back to the dealer?

A. Yes.

Q. What does the dealer do then?

A. He would send it to us with details, we hope, and if he does not we will have to write and find out what the trouble is and then we proceed to correct it.

- Q. Will the dealer do any repairs himself?
- A. We hope not.
- Q. This is not intended or expected, is that right?
- A. No, it causes you more trouble than it is worth.
- Q. Does he do anything in the way of adjustments that would not be regarded as repairs?
- A. Oh, yes, it is quite possible.
- Q. But normally he would send it back to you?
- A. If it requires repairs it would come to us."

(Evidence, pp. 98-99)

3. Dealers' Classification with Regard to
Bolex Equipment

With the exception of Bolex equipment, all lines of photographic equipment distributed by Garlick are available to all its dealers on the same basis. On this point, Mr. Garlick's evidence was as follows:

BY MR. SOMMERFELD:

- "Q. I was directing my question more, Mr. Garlick, to an explanation of what your categories of dealers are. Perhaps you can outline for the Commissioner what classification or categories you do have?
- A. On all products with one exception there is no difference. They are all honoured on an equal basis. They buy from the catalogue and they pay the standard prices or they buy from a competitor. We have no price for you and another price for him, it is standard price and that is it.

In the case of Bolex I have told you we have these highly trained men, we have a lot of expensive equipment. You have an item which very definitely needs a lot of service and it needs a certain amount of intelligent know-how to sell. . . ."

(Evidence, p. 96)

With respect to Bolex equipment, Garlick had customer lists embracing about 800 dealers across Canada in March 1961. Out of that number, approximately 50 were franchised or preferred; 200 stocking and 550 non-stocking dealers (Hearing, p. 73). Franchised or preferred dealers were entitled to a discount of 33 1/3 and 5 per cent; stocking dealers to a discount of 33 1/3 per cent and non-stocking dealers to a discount of 25 per cent from the list price (Evidence, pp. 101-02; Hearing, p. 18). With respect to the distinction between stocking and non-stocking dealers, Mr. Garlick gave the following evidence:

BY MR. SOMMERFELD:

"Q. Do you know what the term stocking and non-stocking dealers in connection with Bolex means?

A. Yes.

Q. Would you explain what that would mean?

A. A stocking dealer is one who would normally carry, say, three items in stock. He would carry two cameras and one projector or something of that nature; in other words, he carries a little stock. A non-stocking dealer might be the type of man who might be a druggist and a doctor comes in and says: 'I will give you all my prescriptions if you will get me a Bolex' and he writes for a camera. He is a non-stocking dealer. "

(Evidence, p. 101)

BY THE CHAIRMAN:

"Q. With relation to non-stocking dealers from your answer a minute or two ago and the illustration you gave it would indicate that it is only a one-shot dealer as far as you are concerned or a dealer who buys occasionally from you but does not regularly handle those items?

A. Normally, sir, a dealer who would buy normally from us in the normal way we would give him one-third, in other words, we lean over backwards in his favour. We do not want to feel that we must supply a dealer who is a one-shot dealer who writes in to us and as often happens he has seen an advertisement or a customer of his has seen an advertisement and he brings it in and says: 'Get me that' and he says: 'I will get it for you'. We never hear from him

again and it is rather discouraging.

Q. That is what I wanted to get at, whether you meant by non-stocking dealer a man who might write in once?

A. Correct.

Q. Rather than a person who buys from time to time but never carries any stock of yours?

A. That is right, we would lean over backwards if he is a genuine dealer and genuinely carrying photographic items.

Q. Whether he carries yours or not?

A. Correct, yes."

(Evidence, pp. 102-03)

BY THE CHAIRMAN:

"Q. ...a non-stocking dealer is spoken of as a one-shot account. Do you mean a one-shot or a man who might occasionally send in an order for some Bolex equipment?

A. We come across that sometimes, maybe a man out in a town who is quite a way from, say, an urban area who has perhaps a studio and store and he knows what he is talking about and if he wants a camera we would supply it to him as a one-shot account.

Q. The one-shot idea sort of indicates that he comes in once and never comes back again but I would think a non-stocking dealer meant a man who did not habitually carry your Bolex equipment for sale or regular purposes but occasionally from time to time would get a call for it and would submit an order?

A. That is right. "

(Hearing, pp. 128-29)

With respect to the distinction between franchised and stocking dealers, Mr. Shapiro gave the following evidence:

BY MR. SEDGEWICK:

"Q. What does a franchised dealership entitle you to by way of purchasing concessions?

A. Purchasing concessions are that it entitles us to an extra five per cent over and above what we were in the practice of getting before, that is, one-third. With the franchise we have an additional five per cent and we also qualify based upon volume of sales for additional percentage depending on the net value that we purchase throughout the year.

THE CHAIRMAN:

Q. What was your status as a dealer prior to becoming a franchised dealer?

A. Our status as a dealer was that we were Bolex dealers and we naturally had to stock Bolex.

Q. Were you a stocking dealer?

A. Yes, we were a stocking dealer before that.

Q. What is the distinction between a stocking dealer and a franchised dealer apart from the fact that you signed an agreement?

A. Based upon our performance. I would not be able to give you a definite definition of it. My understanding of it was that in the opening years we stocked essentially 8 mm equipment, building the business and we did not carry a large range of the accessories that went with that equipment and we stocked virtually nothing in the 16 mm end of it nor did we stock the large 8 mm models which are also made by this company. So we had a fundamental stock of 8 mm cameras. In those days there were two series of single lens models and double lens models and it was a modest kind of stock. We had representation at all times.

Q. Would the distinction roughly be this, that a franchised dealer was required to carry a more varied and expensive line than the stocking dealer and also has been accepted by the Bolex Company as being more experienced in knowledge and ability to deal in their products - is that the distinction?

A. Yes, that is a fair distinction.

MR. SEDGEWICK:

Q. Do you know why you get the extra five per cent when you become a franchised dealer?

A. I think I know why and I think it is justified from our point of view. The franchise involves, as is evident from the list of equipment there, a large investment. It runs, if I am correct (and I did not check any of these figures) into something like \$3,000 at net cost to round out this line in a very basic way. Incidentally this is not complete. So I feel that on the basis of investment just being qualified is worth money to me and, secondly, the investment, which is the realistic aspect of it too would justify the extra discount. I feel that way."

(Hearing, pp. 18-19)

According to the evidence, not only did Garlick make a distinction between Bolex equipment and its other products with regard to retailers to whom the company would sell, but it was also concerned that Bolex products should be sold by dealers which it classed as "legitimate". In this respect, it is significant that the resale of any Bolex products by one dealer to another is forbidden by section 5 of the Bolex Franchise Agreement:

" . . .

5. The Dealer agrees to sell Bolex products directly to the ultimate consumer only and not through any intermediaries whatsoever, directly or indirectly and will not sell or transfer any Bolex products to any other dealer, whether an authorized Bolex Dealer or not.

. . ."

(Serial 683)

The same concern is shown in a memorandum dated July 14, 1959 from John Nicholls to Gordon Crookes, a member of Garlick's Head Office staff:

"Out of a pile of guarantee cards that have been returned to us, I located two which indicate from checks I have made that the cameras concerned were sold to another dealer

both of whom were by no means legitimate photographic outlets.

I would be grateful if you could check on all guarantee cards and ensure that the dealer listed is legitimate. Those that aren't should be brought to my attention immediately.

It is imperative that we look into this problem for such practices are detrimental to Bolex equipment. "

(Serial 646)

In his evidence, Mr. Nicholls said that to be regarded as a legitimate photographic outlet, it was necessary for a store to have a personnel "fully conversant with photographic merchandise" (Evidence, p. 109) and to handle such merchandise "in a substantial way" (Evidence, p. 111). On this matter, Mr. Garlick's evidence is as follows:

"A. . . .

In the case of Bolex I have told you we have these highly trained men, we have a lot of expensive equipment. You have an item which very definitely needs a lot of service and it needs a certain amount of intelligent know-how to sell. . . ."

(Evidence, p. 96)

BY MR. LANDRY:

"Q. I am asking, it is in evidence and you will agree to this that you have three categories of dealer - the franchised dealer, the stocking dealer and the non-stocking dealer?

A. Right.

Q. But what I am asking is is the same technical knowledge of photographic equipment requested by Garlick Films from any dealer to whom it will sell Bolex equipment?

A. Approximately, yes.

Q. It is?

A. Yes.

Q. That is your evidence?

A. Yes.

THE CHAIRMAN:

Q. You mean for all three category of dealers?

A. As close as we can get to it, sir. As I have already indicated they sell practically all the equipment."

(Hearing, pp. 109-10)

BY MR. LANDRY:

"Q. Would it be your evidence that in respect of some of the Bolex equipment no special technical knowledge is requested [required] to sell it? Would there be a distinction to be made between different models?

A. On the whole, no, we would much prefer that it go through a specialized dealer who knows what he is doing but on the other hand there would be exceptional cases where we would bend over and try to help a particular dealer in this case on a minimum discount."

(Hearing, p. 112)

4. Garlick's Concern about the Advertising and Pricing Policies of its Dealers of Bolex Equipment

Without taking into consideration the dealings of Garlick with London Drugs Limited, Baker Drugs Ltd. and Mr. Helmut Schwarzer the following evidence shows that there was concern on the part of the Company about the advertising and pricing policies of its dealers of Bolex equipment. In this respect, the evidence given by Mr. Garlick is as follows:

BY MR. SEDGEWICK:

"Q. Have you ever cut off a dealer for selling below suggested resale price?

A. No.

Q. None of the 800 that you spoke of?

A. No.

Q. Have you ever discussed with dealers their proposed resale prices of cameras?

A. I would say yes in the sense that we like them to sell at a reasonable basis but that is as far as the discussion ever goes.

THE CHAIRMAN:

Q. What do you mean by 'reasonable basis'? It is a pretty broad term.

A. Yes, it is a broad term but it is not one that we can inquire about or do inquire about. For instance, we have never discussed with Shapiro or others what basis they sell on.

Q. I am just wondering what you mean when you say you expect them to sell on a reasonable basis?

A. I would say that this 15 per cent off is a reasonable basis and that is his figure. But if it came to 30 per cent off we would think it was not quite reasonable.

Q. That is what I wanted to get at.

A. Well, there is no definite line.

MR. SEDGEWICK:

Q. Have you ever requested a dealer or dealers not to advertise Bolex for sale at less than the suggested minimum price?

A. We have asked some of the dealers, yes.

Q. Why do you do that?

A. Well, generally in their interests, in the interests of their fellow dealers and in the interest of the good name of the manufacturer and the good name of the product.

Q. I wonder if you could expand on that for us? How is the good name of the product affected if I as a dealer advertise Bolex regularly \$289.95 for \$221?

- A. Well, to begin with you would not increase your sales of equipment. Secondly, you would definitely put a doubt into the mind of the user that there was something substantially wrong either with the price or with the equipment.
- Q. By 'wrong' you mean not Bolex entirely?
- A. Yes, not Bolex entirely. There is some reason that the thing is being given away and either the equipment is not worth that price or there are lenses on it which are not genuine Bolex lenses, etcetera. It just does not add up. It gives a false picture.
- Q. Would such advertising have any effect on existing Bolex users?
- A. Definitely. I think it is exactly the same classification, let us say, as an owner who may have, let us say, a Cadillac and if he finds that Cadillacs are being sold or offered or advertised at a very much deteriorated value I think that he would lose his interest in the product which he has already purchased and it would have the effect of him perhaps not going back to that product when he is again in the field.
- Q. Have you ever been asked by a Bolex user why some one is entitled to buy for \$221 a camera that he had paid \$285 for? Has any such question ever been put to you by a user?
- A. Will you say that again?
- Q. I will rephrase the question and perhaps make my intent clearer. Has any complaint ever been made to you by a person who is already a user of Bolex that an article which he paid, for example, \$300 for was now being listed for sale at \$215?
- A. No, I would say not.
- Q. Have you ever asked a dealer not to advertise at prices below suggested list price and have him refuse to agree?
- A. In one case, yes.

Q. What was your reaction in the case you are speaking of?

A. Nothing.

Q. Did you take any steps to force him?

A. No, nothing we could do about it.

Q. Is he still a dealer?

A. Yes. "

(Hearing, pp. 76-79)

The following memorandum, dated January 9, 1958, written by Mr. Garlick, seems to indicate that the Company took into consideration the discounting activities of its potential customers before deciding whom to franchise in the Montreal area when Garlick became distributors for that territory about July 1, 1958 (Evidence, p. 131):

" . . .

George Hull recommends, as possible preferred future dealers,

Mitchell (X)
Viala
United Photo
Peter Hall
Kirschener (X)

(X) Franchise

Kirschener may be discounting to commercial accounts (confirmed he is) but does not discount to public.

Discount Houses - stay away from:

N. D. G. Photo
Central Camera
Simons (Mendelsohn - part of Precision)
Henry Savard - Photo Service - sell Bolex provided he gives us a reasonable share of his other business

Willowby's is a credit problem; he does not discount.

Watch Dealer on Phillips Square; was advertising discounts.

. . ."

(Serials 513-14)

With respect to this memorandum, Mr. Garlick stated that among the five candidates recommended by Mr. Hull, only Kirschener was franchised. Among the six listed as discount houses, the first three were franchised. As to the last two they are no longer in business (Hearing, pp. 101-05).

Concern about its dealers advertising Bolex equipment at cut prices is also shown in the two following memoranda prepared by company employees:

1. Memorandum from John Nicholls to William Phelan dated March 3, 1959:

" . . .

The problem of price cutting is a very touchy one, and legally, of course, there is nothing that we can do other than to draw the matter to the attention of the dealer and insofar as Bolex and Pentax are concerned, to ensure that they do not cut prices in their window or in the newspaper.

. . .

. . ."

(Serial 600)

2. Memorandum from Mr. Phelan to Mr. Nicholls, dated March 16, 1959:

" . . .

Regarding Williams, I had quite a chat with him at lunch today about advertising discounts on Bolex. He promised me faithfully not to advertise at cut rates again and assured me that he would still be able to sell it without advertising.

. . .

. . ."

(Serial 605)

CHAPTER III

GARLICK'S DEALINGS WITH BAKER DRUGS LTD., LONDON DRUGS LIMITED AND CAMERA ENTERPRISES REG.

1. Baker Drugs Ltd.

Baker Drugs Ltd. was incorporated under the laws of British Columbia in May, 1957. Mr. Archie Baker, who described himself as being the owner, stated that it is a full drug business with a photographic and a cosmetic department. The store is located in the City of Vancouver at the corner of Granville and Smithe Streets.

According to the evidence given by Mr. Garlick, the Company completed only one transaction with Baker Drugs Ltd. In February 1957, it supplied this outlet with one Bolex camera of the least expensive model. The price was \$129.38 and Garlick was paid 60 days after the time of the purchase (Hearing, pp. 93-95; Exhibit H-7).

In October 1958, Baker Drugs Ltd. ordered six Bolex B8L compumatic cameras from Garlick. In the following memorandum dated October 16, 1958, Mr. Nicholls instructed James Andrews, one of Garlick's salesmen, to let Baker Drugs Ltd. know that the Company was not able to fill his order immediately:

"Dear Jimmy:

I just received a telegram from Baker Drugs, 901 Granville Street in Vancouver, which states as follows: 'Require six Bolex B8L Compumatic cameras. Have orders with deposits for same. Wire return collect confirmation and expected delivery date of order.'

I am advising these people by wire to-day, that we have no promise of delivery at the present time, and that you will contact them.

The story is basically at the present moment, that for some time supplies of this camera are going to be very limited, and it rather looks as though we will have to allocate so many to each salesman as each delivery arrives. However, until

you hear from us to the contrary, none of these cameras is available. All you can do is take orders, but do not under any circumstances give any promise of delivery.

Please contact Archie Baker and give him the story. We will of course try to do what we can, but things do not look too promising at the present moment. Incidentally, you will probably realize by now, that of the first shipment of B8L that we received, they were directed into territory 1.

Not one of the other boys has had a single camera so far and hence our next shipment will have to be eked out quite carefully amongst the other salesmen.

I hope this clears up any doubts.

Sincerely,

P.S. If I remember correctly, you asked us not to supply Baker Drugs or London Drugs under any circumstances - please give me the full story immediately."

(Serials 698-99)

On October 20, 1958, Mr. Nicholls wrote to Mr. Andrews as follows:

". . .

Whilst I am away in Montreal, Mr. Garlick wants you to give this matter your very urgent and serious consideration, and to give us a full report on London Drugs and the question of Bolex, by the time we return from the Show. In giving this matter consideration, I want you to bear in mind, that it is not wise to look on this as a nice initial sale of a large amount of Bolex, with obviously future repurchases, but to weigh all this against the possible effect it would have on such dealers as Photolec, Dunne & Rundle, Camera and Supply, and the others who are doing their best to keep Bolex as clean as possible. Always remember, that one dealer in a city the size of Vancouver, cannot really do a satisfactory job on Bolex, if all the other good dealers refuse to sell it as a result of underhand and undercounter dealings.

Please, therefore, give this full consideration and give us your detailed report. At the same time I would like you to give serious consideration to Bakers [sic] Drugs, who appear to be the same sort of operators.

. . ."

(Serials 701-02)

On the same day, Mr. Andrews wrote to Mr. Nicholls:

" . . .

My problem with Baker Drugs and London Drugs is the selling of goods 10% above cost; I have refused to supply them with Bolex because Dunne Rundle, Photolec and Camera Supply will not buy from me if I do.

. . ."

(Serial 703)

In a memorandum dated October 29, 1958, Mr. Nicholls instructed Mr. Andrews to inform Baker Drugs Ltd. that the Company would not be able to supply it with Bolex products at the present time:

"Dear Jimmy:

Many thanks for your letter dated the 20th of October which has at least cleared up the problems in respect of Baker Drugs and London Drugs. It is fairly obvious that in view of the problems you mention, that it would be unwise for us to deviate from our existing sales policy, and therefore, it will be up to you to inform both Baker Drugs and London Drugs that at the present time we will not be able to supply them with any Bolex equipment whatsoever. I do not intend to write to them separately on this matter, and I think that you will understand why. So please immediately, make this matter quite clear to them.

. . ."

(Serial 706)

With respect to this matter, Mr. Garlick gave the following evidence:

BY MR. SEDGEWICK:

"Q. Did Baker Drugs ever place an order with you for Bolex cameras that you did not fulfil?

A. They claimed they did. I have no copy of the order myself. It is possible that there is one but if there is I have not got it.

Q. There is a reference in the Statement of Evidence, Mr. Garlick, to an order placed with Garlick Films by Baker Drugs in October of 1958 for six Bolex B8L Compumatic cameras. Is the Bolex B8L Compumatic camera a product which you supply?

A. Yes.

Q. Is it a popular model of camera?

A. Yes.

Q. Has it ever been in short supply?

A. It has been in very short supply.

Q. When?

A. Some time, I would say, during the period 1958, 1959 - during the whole period."

(Hearing, p. 95)

On the same matter, Mr. Baker gave the following evidence:

BY MR. SAUVE:

"Q. Did you ever deal with Garlick Films Limited?

A. Yes.

Q. Do you know who was their salesman in 1958?

A. Jimmy Andrews.

Q. Are you dealing with Garlick Films at the present time?

A. No.

Q. Why?

A. They won't sell to me.

Q. Do you know why they don't want to sell you?

A. It would be undoubtedly for the same reason, that I am price cutting.

Q. Did you receive any letter to that effect?

A. No.

Q. How did it happen they ceased to supply you? Did you order and they refused?

A. I placed orders with them and they were never processed. I phoned Mr. Andrews two or three times about it and he expressed his opinion they did not sell to me as long as I was cutting prices, that they had to protect their regular camera store outlets and they could not sell to me and still protect their interest.

Q. The evidence indicates in October, 1958, you ordered six Bolex cameras from Garlick Films Limited and were refused such supply. Had you been able to secure supplies of Bolex since then from them?

A. From other dealers.

Q. From Garlick Films?

A. No, not from Garlick."

(Evidence pp. 31-32)

2. London Drugs Limited

London Drugs Limited, sometimes referred to as London Drugs, was incorporated under the laws of British Columbia on December 31, 1957. Mr. Samuel Solomon Bass, who referred to himself as being the owner, said in his evidence that photography is a big part of the business of the drug store, which is located in the City of Vancouver, at 800 Main Street (Evidence, p. 46).

London Drugs started its dealings with Garlick in 1958. In a letter dated March 19, 1958, Mr. Clappison, Garlick's Office Manager, acknowledged receipt of a \$1,200 order from London Drugs together with their application for a retail dealership (Hearing, pp. 92-93). The order included Bolex products for an amount of approximately \$600 (Hearing, p. 87). According to Mr. Clappison's letter (Serial 519), the order was being held, to enable Garlick to obtain credit information on London Drugs.

Asked what was the outcome of the discussion he had then with Mr. Jim Andrews, Mr. Bass gave the following evidence:

BY MR. SAUVE:

"A. The discussion of their policy was more along the line should I obtain a Bolex franchise I would have to maintain the suggested list price which I had to refuse to agree to with the net result they refused to supply us with a Bolex camera.

Q. Did you apply for a franchise?

A. Yes. In fact he took an order at the time we took the account out and sent it back East and it was turned down. . . ."

(Evidence, pp. 55-56)

In a letter to Mr. Nicholls dated March 22, 1958, Mr. Andrews refers as follows to his discussions with Mr. Bass:

" . . .

Now I would appreciate your advise [sic] on London Drug [sic] order (I wired you to hold). Sam Bass the owner (I have discovered) intended to sell this Bolex and other well known brands at 25% off, and is bosting [sic] that he can obtain 40% on Bolex from us to E. A. Morris and other camera store[s]. Yet I spent lots of time explaining our policy befor[e] writing the order. I hate to loose [sic] such a good order, but with Dunne & Rundle, Photolec and Hudson Bay doing such a good job I feel its [sic] best. I would like your ideas on this Nick please.

. . . ."

(Serials 687-88)

On April 1, 1958, Mr. Nicholls replied to Mr. Andrews:

" . . .

I agree with you in respect of London Drug. We have no desire to deal with anybody of this nature, who is desirous of giving fancy discounts and at the same time talking about it very glibly [sic] with all and sundry. I know just how you feel, particularly as this order was a good one, but I do feel that an attitude like this of cutting prices would only antagonize your good dealers in Vancouver. In view of this, we are forgetting about these people.

. . ."

(Serial 691)

Nevertheless Mr. Bass continued to try to secure supplies of Bolex products from Garlick. He gave the following evidence about a telephone conversation he had with Mr. Nicholls on April 8, 1958:

BY MR. SAUVE:

"Q. Do you recall what was said in that telephone conversation you referred to in the first line of this document?

A. The conversation was we were trying to get that Bolex line. I believe we promised him in the conversation that we would not advertise the Bolex line at a reduced price but we would not maintain the price in the store. We would sell the cameras with possibly a giveaway, still passing on a saving to the photographic public.

Q. Did he agree with that?

A. No, he did not."

(Evidence, pp. 56-57)

On the same day, Mr. Bass wrote to Mr. Nicholls:

"Dear Sir,

Pursuant to our telephone conversation of April 8th. in regards to your concern of the Bolex line being sold at a reduced price from the list, I realize the predicament it

would place you in, but you have the altimate [sic] say in the supply of the product and could nil our orders if we did not stay in line with your suggested retail prices.

I would like to submit a few perposals [sic] for merchandising of the Bolex line if it meets with your approval.

- (a) By camera trade in allowance.
- (b) Camera at list with certain accesories [sic] at no charge.
- (c) To introduce the line the camera at your suggested list with a small bag containing an unstated amount of Centennial dollars attached to it.

I believe we can do a big job of merchandising for you by following your selling policy, by building the lower priced movie camera up to the Bolex price.

Our policy is one price for all with no secret discounts allowed, as some of your dealers are doing at the present time. I do not believe in this under the counter discount in the store in order to make a sale, as was suggested by Jim Andrews.

Should you decide to favor us with the line, Mr. Andrews could do all the advertising lay out for us, and would be at liberty to check our sale files to see at what price the cameras are sold.

Would appreciate an early reply from you so that we may know as how to fill in stock from other suppliers.

Thank you.

Yours truly, "

(Serial 523)

In his reply to Mr. Bass, Mr. Nicholls, on April 11, 1958 stated in part:

"Unfortunately, after much discussion, the Company feels that your suggested plans for Bolex are contrary to our Sales Policy and would seriously jeopardize the product in your area.

In view of this, perhaps you would wish us to ship to you, the non-Bolex merchandise, and should you, in the future have any Bolex requirements, these could be shipped to you singly, at a discount of 25%. It is greatly regretted that we cannot

agree to your suggestions, and we hope that you will appreciate the fact that it is our desire to protect Bolex Merchandise both at the Dealer and consumer level."

(Serial 520)

With regard to the above document, Mr. Bass gave the following evidence:

BY MR. SAUVE:

"Q. Were you able to secure a Bolex item at a discount of 25%?

A. From Garlick?

Q. Yes?

A. No, we could not.

Q. Would you look at the document bearing Serial 520, which is part of Exhibit 3. I am reading the third paragraph, 'In view of this, perhaps you would wish us to ship to you, the non-Bolex merchandise, and should you in the future have any Bolex requirements, these could be shipped to you singly, at a discount of 25%.' This is a letter dated April 11th, 1958, addressed to you and signed by Mr. John D. Nicholls. Did you receive that letter?

A. Yes, I did.

Q. What is the meaning of that?

A. April 11th is when we placed the opening order with Mr. Andrews and into the Bolex order he had suggested what I would need in the way of merchandise to have us properly stocked with the Bolex franchise and this letter came to ask us if we did not get the Bolex order, if he could ship the other lines, which we instructed him it was okay to ship."

(Evidence, p. 57)

Commenting upon the same document, Mr. Garlick said the following in his evidence:

BY MR. LANDRY:

- "Q. You said in your evidence that after April 1958 no order for Bolex equipment had been received from London Drugs. Did London Drugs approach the company after April 1958 in order to obtain Bolex products?
- A. No, we have had no order from them.
- Q. I do not refer here to a specific order. What I am asking is did Mr. Sam Bass of London Drugs approach Mr. Andrews, the Vancouver salesman, or Mr. Nicholls the sales manager of the company or you in order to discuss the possibility of him being supplied with Bolex products?
- A. Did he approach, you mean?
- Q. Yes, after April 1958?
- A. I would say he may have discussed the matter with any of those people.
- Q. But do you recall that he did?
- A. He didn't discuss the matter with me.
- Q. Did he with Mr. Nicholls?
- A. He would not be discussing the matter with Nicholls but he may have discussed the matter with the local representative at the time. You see, the whole point, I think, that you are overlooking is that he is not interested in purchasing equipment on that basis.
- Q. On what basis?
- A. The basis of our letter.
- Q. You mean on the basis of 25 per cent discount?
- A. Yes, on a single item to help him out."

(Hearing, pp. 115-16)

The evidence indicates that the attitude of Garlick towards London Drugs came under review in the fall of 1958. An above-quoted memorandum dated October 16, 1958 and addressed by Mr. Nicholls to Mr. Andrews bears the following postscript:

"P.S. If I remember correctly, you asked us not to supply Baker Drugs or London Drugs under any circumstances - please give me the full story immediately."

(Serial 699)

As already indicated, Mr. Andrews replied on October 20, 1958:

" . . .

My problem with Baker Drugs and London Drugs is the selling of goods 10% above cost; I have refused to supply them with Bolex because Dunne Rundle, Photolec and Camera Supply will not buy from me if I do.

. . . "

(Serial 703)

On the same day, Mr. Nicholls, not having received Mr. Andrew's reply, wrote to him:

" . . .

To-day we had a visit from Mr. Sam Bass of London Drugs in Vancouver. He was on his way to Montreal and dropped in to discuss the question of Bolex with myself and Mr. Garlick. He gave to us the full story, and just in passing, I would like you to read the article about him in the current issue of Photo Trade. Apparently, his particular system of merchandising has made himself very unpopular with all the other photographic dealers in Vancouver.

We made it quite clear to Mr. Bass, that [at] the present moment, we have no desire to sell Bolex to him, although he did show us that he would be prepared to put into stock a complete range of Bolex, and display against each camera the full list price. He also went on to say, that he would not advertise Bolex at other than list price and would not mention in any advertisements that he was prepared to give heavy discounts on the product. Apparently his method of merchandising Bolex, would be to give fairly heavy allowances on trade-in cameras.

We went on to explain to him, that when the matter was first brought up, you were the one to suggest to us that we should not sell him Bolex. In consequence, we have not sold Bolex to him, as a result of your feelings on the matter.

Whilst I am away in Montreal, Mr. Garlick wants you to give this matter your very urgent and serious consideration, and to give us a full report on London Drugs and the question of Bolex, by the time we return from the Show. In giving this matter consideration, I want you to bear in mind, that it is not wise to look on this as a nice initial sale of a large amount of Bolex, with obviously future repurchases, but to weigh all this against the possible effect it would have on such dealers as Photolec, Dunne & Rundle, Camera and Supply, and the others who are doing their best to keep Bolex as clean as possible. Always remember, that one dealer in a city the size of Vancouver, cannot really do a satisfactory job on Bolex, if all the other good dealers refuse to sell it as a result of underhand and undercounter dealings.

Please, therefore, give this full consideration and give us your detailed report. At the same time I would like you to give serious consideration to Bakers [sic] Drugs, who appear to be the same sort of operators.

Incidentally, Sam Bass mentioned to us, that he does obtain and sell Bolex and Leica products, but naturally he would not tell us where he obtained his Bolex merchandise. I feel that it would be a very good idea, if at the first opportunity you could obtain from his store some serial numbers of the Bolex cameras he has in stock, and let us have these numbers as soon as possible so that we can carry out some investigation. I would love to know where he is getting them from."

(Serials 700-02)

Then, Mr. Nicholls, in an above-quoted memorandum dated October 29, 1958 (Serials 706-07), instructed Mr. Andrews to inform London Drugs that the Company would not be able to supply it with Bolex products at the present time:

In his evidence, Mr. Bass referred as follows to his attempts to secure Bolex supplies from Garlick:

BY MR. SAUVE:

"Q. . . . Did you, after April 11th, 1958, order any Bolex item?

- A. Yes, we have tried to order Bolex from Mr. Andrews on several occasions but he just would not take the order.
- Q. Were you at one time advised you would not be able to secure any more Bolex supplies from Garlick?
- A. Mr. Garlick himself told me either in the latter part of September or early part of October when I was back in Toronto, in discussion with him, in fact with Mr. Garlick and Mr. Nicholls, they both advised me at no time would they ship the Bolex order.
- Q. But they are still dealing with you on the other equipment?
- A. Yes, that is right."

(Evidence, pp. 57-58)

3. Mr. H. Schwarzer Operating under the Name of
Camera Enterprises Reg.

The Statement of Evidence describes as follows Camera Enterprises Reg. and its first dealings with Garlick:

"43. Camera Enterprises Reg. is a retail camera store, owned and operated by Helmut Schwarzer. Mr. Schwarzer began to sell photographic equipment at retail at the beginning of 1958, using the basement of his residence as store premises. In September 1959, due to a number of circumstances, and, in particular, to the fact that his residence was located in a residential zone of the Grantham Township, near St. Catharines, Ontario, Mr. Schwarzer decided to open a new store on Church Street, in St. Catharines, and ceased to operate from his residence.

44. On January 18, 1958 Mr. Schwarzer wrote to Garlick and asked for their price lists, catalogues and folders dealing with Bolex equipment [Exhibit 3, Serial 517]. Mr. Nicholls, on January 22, 1958 sent literature and a price list, together with a dealer application form, to Mr. Schwarzer, indicating that William Brown, a Company salesman, would call on him in the near future [Exhibit 3, Serial 516]. Mr. Brown did not call on Mr. Schwarzer at that time [Evidence, p. 176]. On January 29, 1958 Mr. Nicholls acknowledged receipt of the dealer application form from Mr. Schwarzer [Exhibit 14, Serial 518]. Mr. Schwarzer's first order to Garlick was given on March 6, 1958 in the amount of \$533.00 [Exhibit 3, Serial 549; Evidence, pp. 112-13]. . . .

45. Mr. Schwarzer added in his application the following information about his operations:

'I have a showroom in a fast-growing residential area (Grantham Townships, St. Catharines) which will expand to approximately 1500 houses this year. The biggest part of my business consists of selling to many Europeans (and their clubs) who buy only excellent European makes from an European. Also I sell in Companies like Can. Westinghouse, etc. in Hamilton through my brother.'

(Exhibit 14)"

After Mr. Schwarzer had been supplied with Bolex equipment, (Evidence, p. 176; Hearing, p. 100) a St. Catharines drug store complained to Garlick about his advertising policies. The letter, dated April 15, 1958, read as follows:

"Gentlemen;

I thought you might be interested in this advertisement in our local paper. Is there anything that can be done about it?

Thank you,"

(Serial 525)

The advertisement referred to read as follows:

"BOLEX Eumig, etc., movie cameras, projectors, Philips [sic] tape recorders, up to 25% discount, 49 Royal Manor Drive, MU 4-5311."

(Serial 526)

To the complaint, Mr. Garlick replied:

"Gentlemen:

Your letter of April 15th is sincerely appreciated. We are definitely interested and thank you very much for advising us.

We appreciate this type of co-operation. Please leave the matter with us.

Sincerely yours,"

(Serial 524)

On July 23, 1958, Mr. Schwarzer ordered three Bolex cameras from Garlick (Serial 544). With respect to this order, Mr. Nicholls wrote to Mr. Schwarzer on July 31, 1958:

"Dear Sir:

We thank you for your Bolex order, but before taking the appropriate action, we would like you to advise us of the fact as to whether or not you have a photographic store in the full sense of the word, and also confirm with us if photography from the retail point of view is your full-time occupation.

We look forward to your early reply, in this matter.

Yours very truly, "

(Serial 542)

On August 12, 1958, Mr. Schwarzer replied that the information requested had already been provided in January 1958 and that his situation had not changed since the Company granted a dealership to him (Serial 549). In reply, Mr. Nicholls wrote to Mr. Schwarzer on August 27, 1958:

"Dear Mr. Schwarzer:

We thank you for your letter dated August 12th, advising us of your organization.

Once Photography becomes your full time occupation and you are able to operate from a fully equipped Photographic Store, we will be very pleased to give this matter further consideration.

Until such time as this occurs, we remain,

Yours very truly, "

(Serial 548)

Nevertheless Mr. Schwarzer continued to try to secure supplies of Bolex products from Garlick. In August or September 1958, he paid a visit to Mr. Nicholls. With regard to this visit, he gave the following evidence:

BY MR. LANDRY

"Q. But at no time in this particular instance was there any question about your selling or advertising policy?

A. No. Actually this was only a side discussion because I mentioned to him that I sell Bolex with about 15 per cent discount which he says he knows and more or less every dealer does anyway. They couldn't stop anybody from giving a discount. The only thing he requests is that I do not make this public, that I do not advertise discounts on Bolex but he said they know very well anyway that every dealer gives a discount, that it is in Toronto even worse than out there in the province.

Q. But you were asked informally not to advertise it?

A. Not to advertise discounts on Bolex."

(Evidence, p. 178)

In April 1959 (Serial 1077), Mr. Schwarzer met Mr. Nicholls in St. Catharines. With respect to this meeting, his evidence is as follows:

BY MR. LANDRY:

"A. . . . At that particular time when I met him in St. Catharines there was a trade show going on in one of the photographic retailers of about ten suppliers who were present over there and also Mr. Nicholls so I figured I would drop in and talk to him. At that time he said: 'Actually, it is quite overdue, you should have a Bolex dealership already again' and again the same thing was discussed, there was no objection to this discount but I should not advertise it. This was the main part of the discussion.

Q. That you should not --

A. Advertise discounts but he had no objection if I gave discounts.

Q. On Bolex?

A. On Bolex.

- Q. Did Mr. Brown visit you then?
- A. No, I met him at the photographic show here in Toronto.
- Q. Did you resume dealings with Garlick?
- A. Yes, I placed at that time an order with Bill Brown and I received that order about a week later, I believe.
- Q. Did you yourself make any commitments to Mr. Nicholls that you would not advertise? He asked you, of course, to do what you have said, he asked you not to advertise but did you yourself engage in advertising?
- A. Yes, I told him he couldn't stop me from giving a discount and he agreed to this but I agreed not to advertise Bolex with the discount price.
- Q. And in fact you did advertise Bolex with a discount?
- A. No, I did not advertise Bolex. I have not advertised Bolex since then. Their budget is quite limited but I heard they won't give you any co-operative advertising like some other dealers do so it is more profitable to advertise with other dealers."

(Evidence, pp. 180-81)

As the photographic show referred to above took place in Toronto in late April 1959 (Serial 1077), it appears from the evidence given by Mr. Schwarzer that he resumed his dealings with Garlick in May 1959 (Evidence, p. 174). That the Company had decided at that time to sell Bolex equipment again to him is corroborated by the following memorandum sent by Mr. Brown to Mr. Garlick on May 11, 1959:

"I have been in contact with Mr. Helmut Schwartz [sic] by phone, and he informs me that he is not selling any merchandise in Hamilton, and intends to strictly stick to his present area.

Nick had correspondence with him lately, and on his trip with me in territory 14, had a long chat with him as to his intentions on advertising etc. and considering his potential, thought it o.k. to ship him.

In my opinion, I feel we will not be doing ourselves any harm in the St. Catharines area, as we should get more Bolex interest."

(Serial 720)

CHAPTER IV

CONCLUSIONS AND RECOMMENDATION

1. Conclusions

Garlick is a distributor of a wide range of photographic equipment and supplies. Although there is evidence that in some instances Garlick made suggestions to retailers as to the level of resale prices for articles which it supplied it does not appear that, except in the case of Bolex products, it attempted to control the promotional practices of its dealers with respect to prices. Mr. Bass of London Drugs who was refused Bolex products by Garlick said: "They would supply us with anything in their line with the exception of Bolex" (Evidence, p. 59). However, the Bolex products in question may be taken to have a significant place in the photographic field.

The witnesses called by Garlick before the Commission put great stress in their evidence on the quality of Bolex products which it is said is recognized by both professional and amateur photographers. Emphasis was also put on the variety and complexity of the lenses and accessories which may be employed with basic Bolex models and which require lengthy and skilful presentation and demonstration for their effective promotion and sale. These factors are undoubtedly of importance and by themselves would do much to explain the desire of Garlick to have the Bolex line stocked and promoted by specialized camera dealers. It was argued on behalf of the Company that, in the instances which form the basis of the allegations made by the Director, the dealers were not in a position properly to demonstrate and service such products. However, it is the opinion of the Commission that the determining factor in each case was the advertising and/or selling policies of the respective dealers.

There is some evidence to the effect that practically all retail sales of Bolex products were made at some discount from the suggested list prices and that such practice was not interfered with by Garlick (Hearing, p. 76). However, it is the opinion of the Commission that, in the case of Baker Drugs, supplies were refused because the Bolex products would be resold at substantial discounts from the suggested list prices. In the case of London Drugs, supplies were also refused by Garlick, because Mr. Bass indicated that Bolex

products would be offered for sale in the store at substantial discounts from the suggested list prices. Finally, in the case of Mr. Schwarzer, Garlick accepted new orders in 1959, only after he had agreed not to advertise at less than suggested retail prices, although maintaining his freedom to sell at lesser prices. It may be noted that the discounts which it was expected by Garlick that Baker Drugs and London Drugs would make from suggested retail prices of Bolex, if supplied with such products, were considerably larger than the discount which was reported to be given by Mr. Schwarzer.

In the circumstances the actions of Garlick in refusing supplies of Bolex products to Baker Drugs and London Drugs constitute, in the opinion of the Commission, attempts at resale price maintenance and are contrary to public policy as set out in section 34 of the Combines Investigation Act.

In the case of Mr. Schwarzer, the Company sought and secured an undertaking not to advertise at less than suggested retail prices. Garlick did not have a co-operative advertising plan with retailers for the sale of Bolex products so there was no direct inducement offered by the Company to a retailer to advertise at suggested retail prices. Nevertheless, the opportunity to secure supplies of Bolex products was clearly an inducement to Mr. Schwarzer to follow an advertising policy acceptable to Garlick. Under the arrangement made with Garlick Mr. Schwarzer could refrain from advertising Bolex products, advertise them at the suggested retail prices or, possibly, advertise without mentioning any prices. As the advertising of an article at a price must be regarded as a method of offering an article for resale it is clear that the conditions under which Mr. Schwarzer was supplied with Bolex products established a form of control by the supplier over the offering of goods for resale by Mr. Schwarzer at less than suggested retail prices and in this way was a form of resale price maintenance. The evidence shows that Mr. Schwarzer refrained from advertising Bolex products which must be considered to have certain economic effects. Any restriction on advertising of prices in the case of a retail dealer seeking to create general public interest in his merchandise must necessarily limit his opportunities to expand the volume of his business. The ability of a retailer to operate profitably on a low margin depends upon the level of his costs which are affected by the type of service he provides and the volume and rapidity of his turn-over. It is clear that the volume of sales is likely to be kept down if a dealer wishing to operate on a low margin is not able to advertise his prices and he may thus be forced to increase his prices to compensate for the sale of fewer articles than he had expected. For this reason, it is the opinion of the Commission

that the pressure exerted by Garlick to prevent Mr. Schwarzer from advertising Bolex equipment at discount prices constituted an indirect attempt to induce this retailer to maintain the resale prices specified by the Company and so conflicted with the principle of section 34 of the Combines Investigation Act.

2. Recommendation

The evidence shows that complaints were made to Garlick by some retailers about the advertising of Bolex products by other dealers at less than suggested retail prices. In the opinion of the Commission, it was because of the attitudes of other dealers and their possible reaction by way of ceasing to deal in products handled by Garlick if their attitudes were not respected that Garlick refused to supply Bolex products to Baker Drugs and London Drugs and sought an undertaking from Mr. Schwarzer not to advertise at less than the suggested retail prices. In order to ensure that such attitudes on the part of some dealers will not in the future lead Garlick to follow distribution policies which would be contrary to public policy with respect to resale price maintenance the Commission recommends that a court order be sought under the provisions of section 31(2) of the Combines Investigation Act to restrain Garlick from adopting a policy or taking any actions which would be in conflict with the policy set out in section 34 of the Combines Investigation Act.

(Sgd.) C. R. Smith

Chairman

(Sgd.) A. S. Whiteley

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(Sgd.) Pierre Carignan

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